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12 UNITED STATES BANKRUPTCY COURT
13 SOUTHERN DISTRICT OF NEW YORK

14 In re

15 DELPHI CORPORATION, et. al.,

16 Debtors

Case No. 05-44481 (RDD)

Chapter 11

(Jointly Administered)

**DECLARATION OF HARRY BRIX IN
SUPPORT OF SUPPLEMENTAL
RESPONSE**

**Claimant: The Brix Group, Inc.
Claim Number 8229**

**Hearing Date: February 8, 2008
Hearing Time: 10:00 a.m. (Prevailing
Eastern Time)**

1 I, Harry Brix, declare.

2 1. I am the principal of The Brix Group, Inc., Claimant in these proceedings I have
3 personal knowledge of the facts set forth below except those stated on information and belief, and
4 as to those facts, I believe them to be true. If called upon to testify as a witness, I could and would
5 testify to those facts.

6 2. I have been the principal of The Brix Group, Inc. for 34 years. In my capacity as
7 President of The Brix Group, Inc., I monitor all day to day operations as well as handle
8 transactions with our larger vendors.

9 3. Pana-Pacific is a division of The Brix Group, Inc. and holds a strong reputation in
10 the trucking industry as a great supplier of electronics in the truck channel, including radios,
11 speakers, antennas, and inverters.

12 4. In early 2002, Pana-Pacific and Delphi Corporation ("Delphi") began discussing
13 potential business ventures in the truck channel. During the summer of 2002, I traveled to Delphi's
14 offices in Kokomo, Indiana to meet with Delphi about the potential business ventures. In
15 attendance at this initial meeting were myself, John Trenberth of The Brix Group, Inc., Steve
16 Hartwig of Delphi, Beth Swarting of Delphi, and Satchel Gidwani of MobileAria (a wholly-owned
17 subsidiary of Delphi).

18 5. During this meeting, I discussed with Delphi a number of business opportunities
19 and observed a presentation given by Delphi and MobileAria concerning a new venture entitled the
20 "Truck PC" project. During this meeting, I learned that the Truck PC project was a project Delphi
21 and MobileAria were working on to provide a system to be installed in trucks which would
22 perform a number of functions including monitoring speed, location, fuel consumption, engine
23 performance etc. and relay that information to the truck's operations/dispatch office via wireless
24 communication.

25 6. At that meeting during the summer of 2002, I was told by Delphi that the underlying
26 products for the Truck PC program were complete and ready for market. I was further informed by
27 Delphi that 4,400 units of the product had already been sold. I specifically asked Delphi if the
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1 software developed by MobileAria for the Truck PC integrated with existing fleet management
2 systems that were already being used by fleets to manage their trucks. In response, Delphi and
3 MobileAria officials told me that the software integrated with existing systems currently used by
4 fleets to manage their trucks.

5 7. After the meeting in the summer of 2002, I am informed and believe that Delphi had
6 determined that The Brix Group, Inc. could more efficiently manage distribution of their products
7 to the commercial vehicle market than Delphi could. Accordingly, Delphi continued to have
8 discussions with The Brix Group concerning the transfer of business from Delphi to The Brix
9 Group, Inc.

10 8. Based on the representations made by Delphi during the meeting in the summer of
11 2002 and subsequent discussions I had with Delphi, I agreed to entered into a Distribution
12 Agreement on behalf of The Brix Group, Inc. with Delphi. On December 19, 2002, I executed the
13 "Distribution Agreement" with Delphi Electronics Corporation, a subsidiary of Delphi
14 Corporation. A copy of the Distribution Agreement is attached hereto as Exhibit A and
15 incorporated herein by reference.

16 9. Under the Distribution Agreement, The Brix Group, Inc. was the exclusive
17 distributor of certain Delphi Electronics Corporation's products in specified markets. In addition,
18 the Distribution Agreement transferred responsibility for fulfilling Delphi Electronics
19 Corporation's sales contracts which were already in effect as of the effective date to The Brix
20 Group, Inc., albeit at a very low margin. Finally, as part of the Distribution Agreement, Delphi
21 promised to release for sale new products which would generate approximately \$750,000 per
22 month in sales and over \$100,000 in gross profit to offset the losses expected from the transferred
23 sales.

24 10. The Brix Group, Inc. and MobileAria, Inc. (a wholly-owned subsidiary of Delphi)
25 entered into a Representative Agreement effective October 7, 2003 for the market and support of
26 MobileAria's services. A copy of the Representative Agreement is attached hereto as Exhibit B
27 and incorporated by reference herein. MobileAria developed the telematics software services to be
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1 used in conjunction with the TruckPC. Functionality of the TruckPC was dependent upon the
2 software developed by MobileAria to perform as anticipated and represented by Delphi to The Brix
3 Group/Pana-Pacific

4 11. Pana-Pacific began performing under the Distribution Agreement in 2003. Almost
5 immediately upon signing the Distribution Agreement, Pana-Pacific, based upon representations
6 made by Delphi, began performing engineering services to support the installation of the TruckPC
7 in various models of trucks and began hiring a sales staff early in 2003 dedicated to selling the
8 TruckPC unit to OEMs and fleets. This sales team developed sales programs, produced sales
9 collateral, made sales presentations and performed demonstrations to truck fleet operators
10 nationwide. Pana-Pacific incurred a total cost of at least \$750,000 in direct costs for this sales
11 team and sales program development over the three year period. In addition, Pana-Pacific incurred
12 additional engineering costs to develop all of the installation applications and hardware for the
13 TruckPC. The Brix Group has not included these costs as a component of its claim in these
14 bankruptcy proceedings.

15 12. As the Pana-Pacific sales and marketing staff began development of the TruckPC
16 sales program, they discovered that the TruckPC did not perform as Delphi had represented to
17 Pana-Pacific in the summer of 2002 and subsequent thereto. Upon further investigation, I
18 discovered that (1) the underlying product for the Truck PC program was not complete and ready
19 for market as misrepresented by Delphi; (2) 4,400 units of the product had not yet been sold as
20 misrepresented by Delphi; (3) the software did not integrate with the existing fleet management
21 systems already being used by fleet systems in the industry as misrepresented by Delphi. As a
22 result, I had to send back to Delphi the TruckPC units in order to have Delphi install updated
23 software into the units.

24 13. The Distribution Agreement also contained a Sales Incentive bonus to Pana-Pacific
25 for 2003 for "new business" plus an incentive on the sale of Truck PC units. Under the
26 Distribution Agreement, the sales incentive would be earned by Pana-Pacific if "new business"
27 sales exceed \$30,000,000 and at least 6,500 Truck PC units were sold in 2003. In my calculations,
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1 I determined that the only way Pana-Pacific would be profitable in 2003 under the Distribution
2 Agreement was if The Brix Group, Inc. could earn the sales incentive associated with selling 6,500
3 TruckPCs. I am informed and believe that margins were supposed to increase as new products
4 were released for sale. Moreover, I believed based on representations made by Delphi that the
5 Truck PC product was ready for sale. However, I discovered later that no new products were
6 released for sale in 2003. The Brix Group, Inc. was not able to meet the sales incentive associated
7 with selling 6,500 TruckPCs since the TruckPC was unavailable for sale, contrary to the
8 representations made by Delphi.

9 14. As a result of these barriers, delays and misrepresentations by Delphi in releasing
10 products for sale, The Brix Group, Inc. incurred a gross loss in sales in the amount of \$2,500,000
11 and gross profit loss in the amount of \$350,000.

12 15. In September of 2004, I attended a meeting with Delphi to discuss the TruckPC
13 project. The meeting was held at MobileAria in Mountain View, California. Beth Swarting, Vice
14 President of Sales & Marketing Delphi and Dan Salmons, Director of North American Sales,
15 Delphi, Sachael Gidwani, President MobileAria, Adam Wege and Dan Jester of Mobile Aria and
16 John Trenberth, Derik Toy and Debbie Cameron of The Brix Group, Inc and myself were present.
17 In this meeting Delphi stated to me that they had received a commitment from Airgas, Inc. to test
18 the TruckPC in 3,000 trucks and that Pana-Pacific was required to purchase all of the peripherals to
19 support the installation in the 3,000 trucks. I was directed by Delphi to contract a Delphi approved
20 company to perform installations. Delphi directed me to deal with third parties to perform
21 installations but that at all times, I understood based on my discussions with Delphi that Delphi
22 would be responsible for the purchase of all of the peripherals to support any installations
23 performed. As a result of the instructions I received from Delphi, I contacted Velociti (a Delphi
24 approved vendor) to perform the installations. I was also told by Delphi that the sales would be
25 paid for by GreatAmerica Leasing Corporation under a lease between Airgas, Inc. and
26 GreatAmerica Leasing Corporation. Further, I was told by Delphi that Delphi guaranteed the lease
27 between Airgas, Inc. and GreatAmerica Leasing Corporation. Based on these discussions, I
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1 understood that any installation charges would be paid for by GreatAmerica Leasing or Delphi (as
2 the guarantor of the lease between Airgas, Inc. and GreatAmerica Leasing Corporation).

3 16. During the meeting in September 2004, I informed Delphi that The Brix Group had
4 discovered numerous problems with the TruckPC, such as software glitches and lack of interface
5 with fleet management systems. Furthermore, to date, all of the tests performed by numerous fleet
6 operators such as Churchill, Roadway and PIE had failed to produce acceptable results and the
7 companies decided not to implement installation in their fleets. I also informed Delphi that no
8 commitment for the sale of 4,400 units had ever been forthcoming, as represented by Delphi. At
9 that point, Mr. Sachael Gidwani, President of MobileAria began waving in the air what he said was
10 a contract for 4,400 units. The Brix Group was never shown that contract.

11 17. During the meeting in September 2004, Beth Swarting told me that The Brix Group
12 was required to purchase all of the peripherals needed to complete the installations for Airgas and
13 was required to contract with Velociti for the installations. Based upon the conversation I had with
14 Ms. Swarting, it was clear to me that Delphi was directing me to deal directly with Velociti for the
15 installations but that at all times, I understood that Delphi would be responsible for the installation
16 costs. Ms. Swarting also informed me that the 3,000 installations must be completed by December
17 31, 2004 and that if The Brix Group, Inc. failed to perform, Delphi would terminate our Delphi
18 Distribution Agreement. Because of the threat made by Ms. Swarting and the potential impact of a
19 loss of millions of dollars in viable business, The Brix Group continued to work with them. As a
20 result, The Brix Group has lost in excess of \$3M.

21 18. In my meeting in September 2004 with Delphi, Delphi reassured me that all of the
22 problems with the TruckPC had been overcome. As a result of my understanding that Delphi
23 would ultimately honor any obligations due to Velociti, The Brix Group, Inc contracted with
24 Velociti, as directed by Delphi, and worked diligently with Velociti to insure that coordination of
25 the installations with Airgas, Inc. were performed and that the TruckPC units and peripheral
26 equipment required to perform all of the installations were delivered to Velociti consistent with the
27 required schedule by Delphi to complete the installations by December 31, 2004.

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1 19. Airgas, Inc. was identified in the Representative Agreement as a "Special Account"
2 between MobileAria, Delphi and The Brix Group, Inc. I am informed and believe that Airgas, Inc
3 was reserved as a "Special Account" because the "sale" to this account was made by MobileAria
4 and Delphi. I am further informed and believe that it was critical for the success of the TruckPC
5 program that the product be tested on a large scale. Airgas, Inc was convinced by Delphi to test
6 the product but because it was a "test" Airgas was unwilling to commit to: either purchase 3,000
7 TruckPCs or be solely obligated on the lease for 3,000 units. Thus Delphi agreed to give Airgas
8 the right to assign the GreatAmerica lease to Delphi if in fact the test failed to produce the desired
9 results. The lease between Airgas, Inc and GreatAmerica Leasing included the provision that
10 Airgas, Inc could assign the lease to Delphi and Delphi was a signatory to the lease.

11 20. On May 10, 2005, GreatAmerica Leasing sent a letter addressed to Mr. Ted R.
12 Schulte, Division President, Airgas, Inc. advising him that based upon material changes in the
13 credit profile of Delphi, GreatAmerica Leasing would no longer accept Equipment Schedules
14 under the Master Lease for the TruckPC unless the right to assign the lease to Delphi was removed.
15 I am informed and believe that Airgas, Inc was unwilling to execute a new lease or an amendment
16 to remove the right to assign their obligation under the lease to Delphi because they were not
17 convinced the TruckPC worked.

18 21. At the time The Brix Group, Inc. received the letter May 10, 2005 letter from
19 GreatAmerica Leasing, The Brix Group, Inc. was in the process of installing the TruckPC in
20 numerous locations around the country. The installations were billed by Pana-Pacific to
21 GreatAmerica Leasing on May 31, 2005, and were not paid by GreatAmerica Leasing. The total of
22 the billings unpaid by GreatAmerica Leasing is \$180,144.34. In addition, because GreatAmerica
23 refused to pay the invoices, The Brix Group, Inc. never billed GreatAmerica for \$138,219.23 in
24 installation costs paid to Velociti, the company specified by Delphi to install the TruckPCs in
25 Airgas trucks. Thus, while The Brix Group has not been paid at least \$318,363.57 for TruckPCs
26 installed in Airgas trucks (Delphi's customer), installations performed at the direction of Delphi,
27 The Brix Group has confirmed in conversations with Mr. Randy Carlson, Delphi Claims
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1 Administrator that Delphi did make payments to GreatAmerica Leasing when the lease was
2 assigned to Delphi by Airgas.

3 22. In December 9, 2005, at my direction, Dave Tilton, CFO of The Brix Group, Inc.,
4 called Mr. Tuffy Baum, National Fleet Manager at Airgas, to inquire as to the status of the "test" in
5 process. Mr. Baum informed Mr. Tilton that Airgas was in the process of removing all of the
6 TruckPCs from their trucks because Airgas had concluded that the test was a failure and the Truck
7 PC did not work. Mr. Tilton reported these facts to me and I notified Delphi of this issue and
8 Delphi informed me that they would take back, under warranty, all of the TruckPC units and give
9 The Brix Group, Inc. full credit for the return of Truck PCs.

10 23. On January 17, 2006 a conference call was held between myself, Beth Swarting,
11 Vice President Sales and Marketing, Delphi, Dan Salmons, Director North American Sales of
12 Delphi and David Tilton, Chief Financial Officer, of The Brix Group to discuss how to deal with
13 ongoing issues related to the TruckPC. Specifically, the issues of the peripheral equipment
14 inventory and outstanding amounts due from GreatAmerica Leasing and Velociti were discussed. I
15 informed Delphi that the peripheral equipment inventory had no value except as a component of
16 the TruckPC installation process. Furthermore, the only reason The Brix Group purchased this
17 equipment was as part of the installation process and based on misrepresentations by Delphi that
18 the product was in good marketable condition and that Delphi would be responsible for the
19 associated charges. Were it not for Delphi's negligence and the threats made by Delphi on the
20 potential loss of business, The Brix Group would never have purchased the peripheral inventory.

21 24. I am informed and believe that a Delphi engineer has verified that all of the
22 peripheral inventory claimed by The Brix Group was, in fact, in the possession of The Brix Group
23 at its location in Fresno, California.

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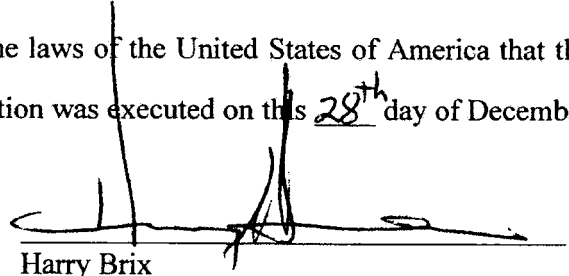
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1 25. Attached as Exhibits C – K hereto are additional email correspondence and charts
2 concerning the TruckPC project.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct, and that this Declaration was executed on this 28th day of December
5 2007, in Campbell, California.

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7 Harry Brix

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